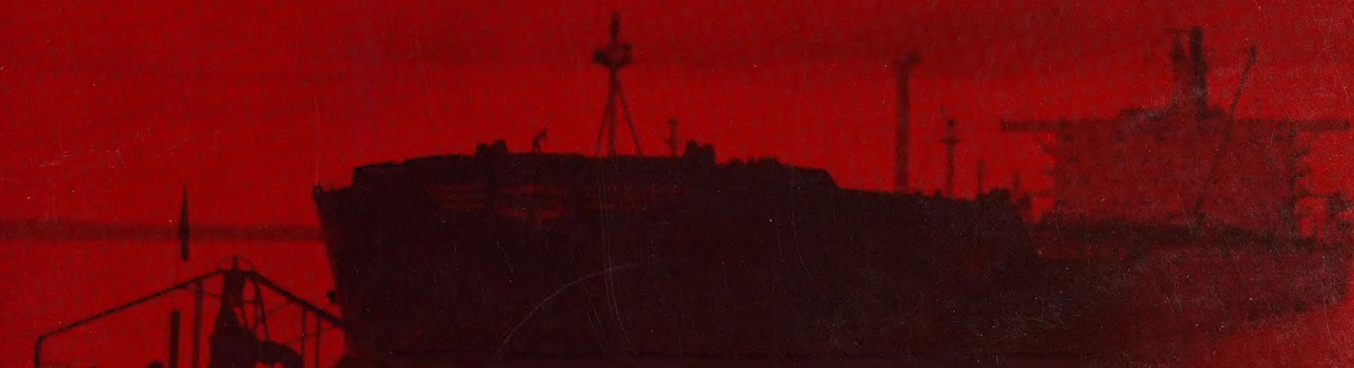
SUBMISSION

to

THE RESTRICTIVE TRADE PRACTICES COMMISSION

ON

THE STATE OF COMPETITION
IN
THE CANADIAN PETROLEUM INDUSTRY



INTERNATIONAL LINKAGES —
CANADA AND THE WORLD PETROLEUM MARKET
1958 — 1982

TEXACO CANADA INC.

VOLUME B

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PART I

INTRODUCTION

The National Oil Policy was announced in February of 1961 and remained in force as Canada's energy policy until late in 1973. The NOP divided Canada in two by drawing a line roughly along the Ottawa Valley. West of the NOP Line was to be served by crude oil produced within Canada, while east of the Line was free either to import foreign crude oil or use domestically produced crude oil. The Director objects to the conduct of the large Ontario refiners, including Texaco Canada, under the NOP, and to the NOP itself, for a variety of reasons.

The Director's most frequently voiced complaint is that the large Ontario refiners ''exploited'' the NOP by causing crude oil prices west of the NOP Line, particularly in Ontario, to be higher than they were east of the Line.[1] Thus, the Director calculates that Ontario consumers could have saved $3.1 billion in ''overcharges'' if domestic crude oil prices in Ontario were equal to those in Montreal.[2] The Director also claims that the large Ontario refiners were responsible for the Government's decision to adopt the NOP, and alleges that the NOP was adopted because it served the private interests of the large Ontario refiners — not because it was in Canada's best interests.[3]

These claims are, however, without merit. As Dr. Peter Eglington testified, the higher Ontario crude oil prices observed during the NOP were caused directly by government policy, and were not the result of efforts to ''exploit'' the NOP.[4] The level of crude oil prices observed in Ontario was also consistent with the behaviour of a competitive marketplace. And it is also worthwhile to note that because of (a) the capital expenditures the large Ontario refiners were required to make to construct and expand Ontario refineries, (b) the large Ontario refiners position as net crude oil purchasers, and (c) the Government's uneven enforcement of the NOP (it allowed competitors of Ontario refiners to import cheaper product across the NOP Line while it forced the Ontario refiners to use more expensive domestic crude oil), the NOP proved more costly for the large Ontario refiners than for other Canadian oil companies.

The Director's allegation that the NOP was adopted because it served the interests of large Ontario refiners is, moreover, directly contradicted by the statements of the Royal Commission on Energy (the Government-appointed panel that proposed the NOP), and by other studies that have considered Canada's decision to adopt the NOP. As these studies demonstrate, the main purpose of the NOP was to stimulate crude oil exports to the United States, where U.S. regulations kept crude oil prices above offshore price levels, and thereby reduce the large shut-in capacity that had developed in Alberta's oilfields. The United States Government did not, however, approve of unlimited Canadian exports and, throughout the 1960s, placed a number of restrictions on Canada's ability to ship crude oil across the border. The NOP Line, because it prevented transshipment of offshore crude oil and helped keep domestic Canadian crude oil prices in equilibrium with U.S. crude oil prices, was an important element in maintaining an open market for Canadian crude oil in the United States.

The NOP was a tremendous success in achieving its goal. Because the NOP allowed Canada to develop her petroleum resources by selling into the high priced U.S. market, while still having access to cheap offshore crude oil, there is ''little doubt'' that the NOP was beneficial for Canada

as a whole.[5] And, when the changed circumstances of the world crude oil market, caused by the embargoes and sharp price increases of 1973 caused Canada to change her energy policies, Prime Minister Trudeau, in a public address to the nation, looked back over the NOP as a policy from which ''all Canadians benefited.''[6]

But in order to appreciate the reasons supporting Canada's decision to adopt the NOP, and the effect the NOP had on Canada's economy as well as on the Ontario refiners operations, it is necessary to review more of the postwar history of Canada's petroleum industry than the Director saw fit to discuss in the Green Books.

PART II

THE PURPOSE OF THE NOP

The Green Books claim the NOP was adopted because it served the interests of the large Ontario refiners. The Green Books claim the Ontario refiners ''actively sought and were successful in having''[7] the NOP implemented, and that they supported the NOP because it ''increase[d] the rewards for anti-competitive behaviour.''[8] The Green Books also suggest that the NOP was adopted because ''Governments can be persuaded during crises to adopt policies that, in the long run, are likely to affect competition adversely.''[9] To the authors of the Green Books, the NOP was just such an anti-competitive policy.

This description of the purpose of the NOP, and of the Ontario refiners' incentives for supporting it, is a distortion of history. It is contradicted by the testimony of Dr. Peter Eglington, and by much of the information contained in the Green Books themselves.

To develop the background for Canada's decision to adopt the NOP, and to appreciate why the Ontario refiners' support of the NOP was consistent with the Royal Commission on Energy's views of the Canadian national interests, it is necessary first to understand the nature of the energy crisis that faced Canada in the late 1950's.

A. The Early Years of Canada's Petroleum Industry

Until the late 1940's Canada was a minor petroleum producer with no crude oil exports and indigenous production that supplied less than ten percent of her domestic petroleum needs.[10] Then, in 1947, Imperial Oil discovered the Leduc field in Alberta. The Leduc discovery triggered a chain of exploration and development successes that changed Canada's position in the world petroleum market almost overnight.[11] By 1957 new crude oil discoveries made Canada 67 percent self-sufficient in petroleum and allowed her to export 30 percent of her total production.[12]

Developing Canada's resources was not, however, an easy task. Alberta's fields were located far from consumer markets, and as early as 1949 it was apparent that local demand could absorb only a small fraction of Alberta's potential output.[13] Thus, Alberta's producers quickly ''looked to the American export market'' as well as to densely populated Ontario as an outlet for their crude oil.[14]

But in order to bring Alberta's crude oil to market it was necessary to construct large scale pipelines.[15] These pipeline projects entailed great risk and expense, and could be completed only if refiners and producers provided financial guarantees adequate to support initial construction and operating costs. To overcome these difficulties, major oil companies made commitments for ''sufficient throughput obligations to service the funded debt'' of the project and ''to deliver Canadian crude oil at prices competitive with those of United States crude oil.'' These assurances were necessary so that a market for Canadian crude oil would develop in the United States.[16]

Because of these undertakings, two major pipelines bringing Alberta's new-found crude oil to market were completed in the early 1950's. In 1951 the Interprovincial Pipe Line connecting Alberta to southern Ontario and the Midwest portion of the United States was opened.[17] And, in 1953, the Trans Mountain Pipeline was completed bringing Alberta's crude oil to British Columbia and the Northwestern portion of the United States.[18]

The construction of these pipelines had two important and long-lasting effects on the Canadian petroleum market. First, they provided a transportation system that was essential to the development of the industry. In this context, it is important to recognize that the majority of Canada's petroleum was then and is today produced by companies that do not own refineries.[19] Thus, crude oil producing interests without affiliated refiners, not the Ontario refiners, were the clearest beneficiaries of efforts to open new markets and to increase the wellhead price of Canadian crude oil.[20]

Second, because the pipelines brought Canada's crude oil to United States consumers, Canadian petroleum users found themselves in competition with U.S. consumers. Competitive market forces and business realities would therefore require that crude oil prices in both markets be in equilibrium. Thus, the price of Canadian crude oil was affected not only by the price of imports coming into eastern Canada, but also by the prices U.S. consumers were willing to pay for Canadian production.[21] As we explain below, because United States regulations kept petroleum price in the U.S. market above prices in Venezuela, the Middle East, and other offshore sources, U.S. consumers were willing to pay high prices for Canadian crude oil. United States consumers thus bid up the price of Canadian crude oil to levels higher than those prevalent in offshore markets and this in turn caused Canadian refiners to pay higher prices for Canadian crude oil.

B. The Problem of Excess Capacity

Construction of the Interprovincial and Trans Mountain Pipelines did not, however, provide markets large enough to absorb the output of Canada's new found fields. By 1954 the Ontario market was saturated with Alberta production and "the Canadian oil industry was supplying practically all crude oil requirements in Canada between Vancouver and Toronto."[22]

Alberta's oil fields thus suffered from exceedingly low utilization rates. The Borden Commission estimated that in 1958 Alberta fields produced at only 39% of capacity[23] and, as of July, 1958, Imperial's production stood at only 30% of its capacity.[24] Incentives for exploration and development in Canadian fields were correspondingly low, and there was concern that Canada's once promising domestic petroleum industry would not develop to its full potential.

C. United States Trade Barriers

In 1948, just as Canada's new production capacity was becoming known, the United States found itself without enough domestic production to fill her petroleum needs.[25] The United States had just become a net petroleum importer and the prospect of large quantities of crude oil in nearby Canada "did not pass unnoticed by the U.S. government and its oil industry."[26]

While additional Canadian production entering into the United States market would increase crude oil supply and lower U.S. crude oil prices, and thereby benefit U.S. consumers, U.S. crude oil producers were concerned that foreign crude oil imports would drive down U.S. wellhead prices and reduce their profits.[27] U.S. producers seeking to limit imports also found allies among those concerned over the national security implications of the United States' growing reliance on imported crude oil.[28] These protectionist interests brought powerful political force to bear on the U.S. Government, and eventually persuaded the U.S. Government to impose restrictions on the importation of petroleum and petroleum products.

The 1955 Quotas. In 1955, a Presidential Advisory Committee found that the level of imports into the U.S. posed a threat to national security and therefore recommended a set of voluntary import quotas. Under these quotas imports were to be limited to 9.4% of domestic U.S. production, the penetration level reached during 1954.[29]

The 1955 voluntary program was, however, a failure, and Canadian exports played a significant role in the program's demise. When the 1956 Suez Crisis isolated the U.S. from Middle East sources of supply, Canadian exports took up much of the slack. And, in 1957, U.S. crude oil prices increased by about 35 cents per barrel, but Canadian prices remained relatively stable. This price differential provided Canadian crude oil with an additional lure to U.S. purchasers.

Thus, as Adelman explains, while U.S. forces were ''mobilized on the anti-import side, their flank was threatened by the buildup of productive capacity in Canada.''[30] Though Canadian costs ''were perhaps no lower on the whole than in the United States, the prorationing system [in Canada] was less rigid and hence less disabling,'' and Canadian crude oil had a locational advantage in the western United States.[31] Consequently, higher American prices ''could be relied on to draw in a considerable supply of Canadian crude oil.''[32] Moreover, because Canadian crude oil was produced by companies with few or no interests in U.S. oil fields in Louisiana or Texas, Canadian producers had no incentive to hold back on exports to protect U.S. production profits.[33]

As a result of these market conditions, Canadian exports to the U.S. more than tripled from 46,000 barrels per day in 1955 to 151,000 barrels per day in 1957.[34] This tripling of exports accounted for all the growth in Canadian production between 1955 and 1957.

The 1957 Quotas. With the failure of the 1955 quotas, the United States Government turned in 1957 to a new voluntary quota system that sought to limit imports to approximately 12% of domestic production.[35] The 1957 voluntary quota was based on historical import levels and would therefore fall especially hard on the burgeoning Canadian export market. Thus, Canada was expected to ''resort to intense diplomatic maneuvering to keep the market open.''[36] Canadian diplomatic efforts to obtain relief from the quotas were not, however, entirely successful.

Initially, the Western portion of the United States was exempted from quota controls, but in 1958 the U.S. Government requested importers to limit their purchases from all sources to 220,000 barrels per day, down from a scheduled volume of 350,000 barrels per day.[37] This quota reduction, in conjunction with a recession in the United States, and the opening of a new pipeline from Utah to Los Angeles, caused a sharp decline in Canadian exports to the U.S. West Coast from 151,000 barrels per day in 1957 to 84,000 barrels per day in 1958.[38] In the Puget Sound area alone, Canadian exports fell from a 1957 peak of 94,000 barrels a day to only 11,000 barrels per day by autumn of 1958.[39] At the same time, U.S. reliance on Canadian crude oil decreased from 14.8% of imports to 8.8% of imports. The full extent of these declines is described in Table 1, following.

The United States' 1957 import restraints thus presented significant barriers to the development of Canada's petroleum industry and contributed substantially to the excess capacity in Alberta's oil fields. By 1959, the problem was on the verge of becoming even more serious with the introduction of the Mandatory Oil Import Program (MOIP).

TABLE 1

Canadian Crude Oil Exports to the United States, 1956 to 1973.

	Thousands of Barrels Per Day		Canadian Exports as a Percentage of U.S. Imports**	Canadian Exports as a Percentage of Canadian Production	Annual Growth Rate of Canadian Exports
Year	Canadian Production*	Canadian Exports to U.S.*			
1956	474	117	12.5%	24.7%	+254.3%***
1957	499	151	14.8%	30.3%	+ 29.0%
1958	455	84	8.8%	18.5%	− 44.8%
1959	510	91	9.6%	17.8%	+ 10.9%
1960	530	114	11.0%	21.5%	+ 22.6%
1961	628	185	17.5%	29.5%	+ 61.1%
1962	715	239	20.7%	33.4%	+ 27.8%
1963	755	249	21.9%	33.0%	+ 6.2%
1964	817	279	23.2%	34.1%	+ 12.4%
1965	867	297	23.8%	34.3%	+ 6.1%
1966	950	346	28.3%	36.4%	+ 17.6%
1967	1030	416	28.3%	40.4%	+ 18.7%
1968	1109	466	35.9%	42.0%	+ 12.6%
1969	1220	556	39.5%	45.6%	+ 20.0%
1970	1380	673	50.7%	48.8%	+ 20.6%
1971	1472	757	42.9%	51.4%	+ 7.4%
1972	1682	944	38.5%	56.1%	+ 18.7%
1973	1969	1139	21.2%	57.8%	+ 20.7%

* Source: Evidence of Dr. Peter Eglington, submitted by the Director of Investigation & Research, Combines Investigation Act at 4, col. 1 (1982) (hereinafter cited as Eglington Submission), see Tab 14, Volume D.

** Source: *Energy Facts: U.S. House of Representatives, Subcommittee on Energy of the Committee on Science & Astronautics*, 93d Cong., 1st Sess. 327-28 (1973) (for 1956-1972 data); Congressional Research Services, 96th Cong., 2d Sess., *The Energy Factbook* 116, 118 (1980) (for 1973 data), see Tab 15, Volume D.

*** Source: Eglington Submission at 4, col. 2 (Increase in exports from 46,000 barrels per day to 117,000 barrels per day), see Tab 14, Volume D.

The Mandatory Oil Import Program. The MOIP was a complex regulatory scheme, but as its basic theme it sought to limit imports to about 9% of domestic U.S. demand.[40] As with the previous voluntary quota programs, the United States Government's most important reason for adopting the 1959 mandatory quotas was concern for national security. However, despite the fact that Canadian supplies were not subject to risks of embargo or blockade, the United States initially refused to exempt Canadian crude oil from import restrictions. Instead, the restrictions placed on Canadian crude oil were the same as those placed on less secure crude oil shipped by tanker from the Middle East and Venezuela.[41]

Because the 1959 price of Canadian crude oil was higher than the price of crude oil imported from offshore sources, U.S. purchasers subject to a quota would have filled their allocations from cheaper Venezuelan and Middle-Eastern suppliers, and not from Canadian suppliers.[42] Moreover, because the costs of exploring for crude oil and developing proven reserves were higher in Canada than in the Middle East or in Venezuela, and because of the transportation costs

involved in bringing Canadian crude oil to market, newly discovered Canadian crude oil could not be delivered as cheaply as crude oil from offshore sources.[43] Thus, had Canadian production remained subject to MOIP restraints, exports to the United States would have been severely curtailed and incentives for the development of Canada's domestic petroleum industry would have been sharply reduced.

Because of the potentially devastating effect of these mandatory quotas, Ottawa vigorously protested the MOIP. There was, however, concern in the United States that if Canada was allowed unlimited access to the U.S. market she would simply transship foreign crude oil by increasing Canadian imports of cheap offshore crude oil while simultaneously exporting domestic Canadian production into the high-priced U.S. market.

Canadian transshipment concerned the United States for two reasons. First, in the event offshore supplies were cut off, Canada would also find herself without foreign petroleum. Canada would then be tempted to divert her domestic crude oil from the U.S. export market and cut off United States customers in favour of domestic Canadian consumption. Allowing Canada unlimited access to the U.S. market therefore ran the risk of substituting concern over the security of Canadian supplies for concern over security of offshore supplies to the U.S.[44]

Second, because of the operation of U.S. prorationing systems, increased Canadian exports would displace domestic U.S. production and reduce U.S. producers' earnings.[45] Thus, if Canada was allowed unlimited access to U.S. markets, and if she remained free to import unlimited amounts of cheap foreign crude oil, Canada could reap a substantial profit by playing the margin between the high priced U.S. market and cheaper offshore prices. The prospect of allowing Canada to play both ends of the world crude oil market by buying cheap from abroad and selling dear into the United States did not appeal to U.S. interests.

Despite these concerns, Canada persuaded the U.S. Government to adopt an "overland exemption" that lifted all restrictions on crude oil entering the U.S. by pipeline.[46] This exemption was not, however, politically secure because, as we demonstrate below, it depended on assurances against transshipment. Much of this assurance was provided by the NOP line.

D. The Borden Commission and Canada's 1950's Energy Crisis

The late 1950's were difficult times for the producing sector of Canada's petroleum industry. Alberta's oil fields suffered from excess capacity, and there was concern that the United States, the major market for Canadian production, would shut her borders to Canadian crude oil. To deal with these problems, the Government, in 1957, appointed a Royal Commission on Energy. The Commission was charged with the task of inquiring into and making recommendations concerning "the policies which will best serve the national interest in relation to the export of energy and sources of energy from Canada."[47]

The Commission, popularly known after its chairman as the Borden Commission, recognized that "the export and domestic markets for Canadian crude oil are interrelated" and that a "review of export markets alone would not [be] sufficient to discharge its mandate."[48] Thus, the Commission embarked on a wide ranging review of Canada's entire petroleum industry. It held public hearings from February 1958 to July 1958 in six cities across Canada, and received submissions from over one hundred parties. Among the parties who testified were provincial governments, private citizens' groups, gasoline retailers' associations, oil companies of all sizes from all parts of Canada, energy consuming industries, and pipeline companies.[49] In

the course of these hearings two options emerged as the leading candidates to stimulate further development of the Canadian petroleum industry.

(i) The Montreal Pipe Line Option

The first option involved extending the IPL to Montreal and was promoted mainly by independent petroleum producers in western Canada. Western producers estimated that a Montreal pipeline would add at least 200,000 barrels per day to demand for Canadian crude oil and reduce excess capacity by an equivalent amount.[50] However, as pointed out by the Borden Commission, there were at least three drawbacks to this proposal.

First, a Montreal pipeline would be expensive and construction costs would add substantially to the ultimate price of domestic crude oil delivered in Montreal.[51]

Second, because the price of foreign crude oil delivered in Montreal was below the price at which domestic crude oil could be delivered in Montreal, domestic crude oil would not be able to compete unless it was protected either through tariff or quota barriers. Any such barriers would, however, have raised the price of foreign crude oil and would have prevented Quebec's consumers from benefiting from lower offshore crude oil prices.[52]

Third, any company that built a Montreal pipeline would be assuming a significant risk that government policies might change and that cheap foreign crude oil might flood the Montreal market and make the pipeline unprofitable. The Borden Commission thus determined that Government subsidies would have been necessary in order to finance construction of a Montreal pipeline.[53]

(ii) The Expanded Exports Option

The expanded exports option that ultimately served as the basis for the NOP was supported by large Ontario refiners who argued that (as an alternative to the Montreal pipeline) the government should promote use of Canadian crude oil in refinery areas already served by Canadian crude oil (predominantly Ontario) and simultaneously expand exports to the United States.

The Borden Commission ultimately found that, as of 1958, Canadian crude oil was ''fully competitive at the Ontario refineries'' with imported crude oil.[54] Thus, by substituting domestic production for Ontario's then equally expensive imports, it would be possible to increase demand from the Western fields by about 50,000 barrels per day without noticeable price increases to Ontario consumers.[55]

The Commission also found that the United States market offered greater potential for the development of the Canadian industry than did the Montreal market.[56] This observation, combined with the fact that Canadian crude oil was selling at prices attractive to U.S. users,[57] made the prospect of selling crude oil to the high-priced U.S. market quite appealing.

The potential weakness of this export strategy was that it was vulnerable to U.S. import restraints. As the Commission noted, oil companies demonstrated that ''the most economic markets for Canadian crude oil were the West Coast, Middle West and Great Lakes areas of the United States'' but ''Canadian crude oil was having difficulty entering these markets because of United States import restrictions.''[58] These difficulties were eased somewhat by the overland exemption available under the NOP, but barriers to the export of Canadian crude oil were hardly

eliminated, and pressure to impose additional restraints remained strong in the U.S. Thus, it was clear to the Commission that "energetic steps" would have to be taken "to ensure that Canada will be able to fully enjoy the benefit of the exemption accorded to it by the United States."[59]

(iii) The Basis for the Borden Commission's Decision

The Borden Commission concluded that its basic task was to find a policy that would best "increase the level of production of the oil industry in Canada to the point when such production will sustain a strong and healthy industry without adversely affecting the cost of energy to the Canadian consumer."[60] Achieving this goal required a delicate balance of competing interests.

The Borden Commission resolved this dilemma by proposing that Canada adopt the export option and table the Montreal pipeline. This strategy would (a) allow Quebec to enjoy the advantages of low-priced foreign crude oil — an advantage that would have been lost under the independents' Montreal pipeline proposal, (b) impose no immediate costs on Ontario consumers, and at the same time (c) provide economic incentives for exploration activity through a secure market in Ontario and an expanded export market in the United States. In effect, by relying on the high-priced U.S. market to provide the major stimulus for development of Canada's reserves, the Borden Commission shifted a portion of the cost of developing Canada's petroleum industry to U.S. consumers.

To achieve its export goal, the Commission exhorted the Canadian oil industry to "take vigorous and imaginative action very substantially to enlarge its markets in the United States on a basis that will ensure the continuing participation of Canadian crude oil in these markets and in their expansion."[61] The NOP's export targets were set sufficiently high that the only way they could be achieved was by dramatically increasing exports into the United States. Indeed, the Government's eventual decision to adopt the NOP was conveyed to the United States Government before its announcement on the floor of Commons, where it was represented that the NOP "is wholly consistent with the growth of sales of Canadian crude oil contemplated when exemption from United States crude oil import controls was established."[62]

The Commission's decision was evidently a carefully considered and sensible one. In comparison with the Montreal pipeline option, it promised lower prices for Canadian consumers because cheaper crude oil would continue to flow into Quebec. The United States market also promised to become a greater outlet for Canadian crude oil than Montreal could ever become. And, by providing assurances that exports to the United States would not result in transshipment of foreign crude oil into Ontario, the Borden Commission's proposal helped assuage U.S. concerns over the security implications of relying on Canadian production.

This history of the NOP is confirmed by the testimony of Dr. Peter Eglington. Dr. Eglington explained that the Borden Commission was concerned with the interests of the Canadian consumer as well as "how best to nurse the ailing industry back to health."[63] The policy finally recommended by the Commission and, in February 1961, adopted by the Canadian Government, had as its "major thrust," encouraging exports to the United States, and, as its "secondary thrust," reserving most of Ontario for Canadian crude oil.[64] And, as the Green Books explain, it is important to recognize that the primary purpose of the NOP line was not so much to protect Ontario for Canadian producers, but that it was adopted "in order not to jeopardize the Canadian producers' exemption from the U.S. import quotas."[65] Indeed, "a good part of the 18 months that elapsed between the Borden Commission's report and the announcement of the policy was

fruitfully used to explore the U.S. Government's views on acceptable level of exports.''[66] Thus, as the Green Books themselves observe,

> ``the National Oil Policy was the government's reaction to the American position. By stating that it did not want foreign crude oil displacing domestic crude oil usage in Ontario, the government attempted to create the political conditions that would permit continued Canadian crude oil exports to the United States.''[67]

The NOP was thus adopted because the Borden Commission recommended it as a reasonable and responsible course of action for Canada. The Director's allegation that the NOP was designed for any purposes other than the benefit of Canada as a whole, and that the large Ontario refiners' decision to support the NOP was contrary to Canada's best interests, should therefore be rejected as inconsistent with the history of the NOP, inconsistent with the findings of the Borden Commission, inconsistent with evidence contained in the Director's own Green Books, and inconsistent with the testimony of Dr. Eglington.

PART III

THE LARGE ONTARIO REFINERS DID NOT "EXPLOIT" THE NATIONAL OIL POLICY

The Green Books allege that once the large Ontario refiners had successfully persuaded the Government to adopt the NOP they were able to exploit the policy to their own advantage.[68] The Director also argues that even if the NOP "was not meant to reduce competition" and did not exempt the oil industry from the Combines Investigation Act,[69] it "had the effect of changing the environment within which the industry operated"[70] and did so in a manner that "increased the rewards for anticompetitive behaviour."[71]

The Director claims the large Ontario refiners exploited the opportunities for anticompetitive behaviour presented by the NOP by increasing prices west of the NOP Line and thereby causing massive "overcharges" to Ontario's consumers.[72] In particular, the Director compares (a) prices in Ontario during the period the NOP was in force against (b) prices he estimates would have prevailed in Ontario had the Government not adopted the NOP and instead allowed cheaper foreign crude oil into the Ontario market.[73] The Director then holds the large Ontario refiners solely responsible for higher Ontario prices and attributes all these higher prices to the majors' anticompetitive behaviour.[74]

But this analysis is fatally flawed. As we demonstrate, in order to determine whether the large Ontario refiners "exploited" the NOP through anticompetitive behaviour, the price differences between the Ontario and Montreal markets must be compared with price differences that would have been observed if the Ontario market were competitive but still subject to the NOP.

However, because the NOP placed Ontario consumers in competition with U.S. consumers willing to pay higher prices for crude oil, even in a perfectly competitive market, subject to the NOP Ontario prices would have remained above offshore price levels. Therefore, by simply establishing that there was a price difference between Ontario and Montreal, the Director establishes nothing about the competitive performance of the large Ontario refiners. Indeed, a comparison between U.S. crude oil prices and crude oil prices in Ontario shows that during the NOP the price of Canadian crude oil fell relative to the U.S. crude oil — the only competitive crude oil in the market. As explained below, this suggests the Ontario refiners did not "exploit" the NOP.

Moreover, because the large Ontario refiners were net purchasers of Canadian crude oil, on balance they could not benefit from domestic crude oil price increases. Thus, the Director's conclusion that the Ontario refiners utilized the NOP anticompetitively to raise prices in Ontario is not only contrary to the evidence, it assumes refiners sought to follow a policy against their own best interests.

In addition, throughout the NOP, both the Canadian and United States Governments were intimately involved in monitoring the level of Canadian exports, and authorities on both sides of the border sought to assure that Canadian exports did not grow too rapidly. These governmental efforts to curb Canadian exports without imposing mandatory quotas could only have been realized if Canadian crude oil prices west of the NOP line were kept above offshore price levels.

The Canadian Government also sought to influence Ontario product prices by controlling the amount of cheap foreign crude oil flowing westward across the NOP line. As we explain, this activity squeezed Ontario refiners because it required that they pay higher domestic crude oil prices but compete against product refined from cheaper offshore crude oil. Thus, the Canadian and U.S. Governments must take active responsibility for the level of prices that prevailed in Canadian fields and in Ontario during the NOP.

Finally, we demonstrate that the costs of complying with the NOP were borne primarily by Ontario refiners, and conclude that whatever higher prices existed in Ontario during the period of the NOP were the direct result of Canadian Government policies and were not the consequence of anticompetitive ''exploration'' by the large Ontario refiners.

A. Competition and the NOP

The Green Books display a fundamental misunderstanding of elementary economics when they suggest that it was a violation of the Combines Investigation Act, or was in any sense anticompetitive, for oil companies to respond to the National Oil Policy by setting prices differently in Toronto and Montreal. The Director admits that the industry ''faced a different environment in that part of Canada served by domestic crude oil as compared to that section of the country served by foreign crude oil.'' But he insists that because the NOP ''did not dictate a pricing policy,'' the majors can be condemned for raising prices in response to the ''different environment'' west of the NOP line. The Director calls this behaviour ''anti-competitive,'' ''inimical to the public interest,'' and an ''exploitation'' of the NOP.[75]

This is economic nonsense. Because supply and demand conditions to the west of the line were different from those prevalent east of the line, prices were different. It makes no sense to condemn any company for responding to different economic conditions in different markets by charging different prices. That is what competition dictates.

Dr. Peter Eglington testified that the NOP had the effect of creating ''two markets essentially distinct.''[76] East of the NOP line Canadian markets were ''purposefully to be exposed to world market price competitive effects,''[77] but west of the line ''prices would be set through the interplay of supply and the demand in the [competing] U.S. [market] and in Canada tempered to a degree perhaps by some product flows'' across the NOP.[78]

Thus, ''the Borden Commission and the government at the time contemplated two prices . . . and it is understandable, then, there was a differential between the laid down crude oil price for Alberta crude oil in Ontario west of the Ottawa Valley Line and in Montreal.''[79] But was this differential caused by anticompetitive behaviour, as is alleged in the Green Books, or was it ''caused directly by government policy''?[80]

The Director's mathematics comparing prices in Ontario with lower Montreal prices cannot answer this question because, even if the Canadian petroleum industry west of the NOP line was perfectly competitive, as long as the NOP remained in place prices in Ontario would have been higher than prices in Montreal. The reason is that crude oil prices paid in Ontario were determined by the competing price that could be obtained in the United States where regulations kept prices above offshore levels. Thus, a comparison of Ontario and Montreal prices is sufficient only to prove that the NOP, because it isolated Ontario from world market prices, allowed U.S. regulations to create higher crude oil prices in the Ontario market. The comparison demonstrates nothing about competitive behaviour.

(i) The Price of Canadian Crude Oil Relative to U.S. Crude Oil Did Not Increase During the NOP

As the Green Books demonstrate, and as Dr. Eglington testified, the price of Canadian crude oil relative to U.S. crude oil declined during the NOP.[81] This price pattern is inconsistent with the Director's allegation that the large Ontario refiners exploited the NOP. In a competitive market operating subject to the NOP, the price of Canadian crude oil and U.S. crude oil should have moved in tandem. Thus, as U.S. prices increased Canadian prices should have followed — especially if the Director is correct about the Ontario refiners' desire to exploit the NOP by raising crude oil prices. The fact that Canadian crude oils actually became cheaper relative to U.S. product demonstrates quite clearly that the Ontario refiners did not take advantage of the NOP as the Director suggests.

Table 2, following, presents further evidence that during the NOP the price of Canadian crude oil actually declined relative to U.S. prices.[82] Table 2 indicates that from 1961 to 1965, the price of Canadian Redwater crude oil was about 87% of the price of three reference U.S. crude oils. This percentage is only a bit less than the 88% ratio that prevailed during the 1959-1960 period immediately prior to the introduction of the NOP. Then, in 1966, U.S. prices increased but Canadian prices failed to follow. This caused the relative price of Canadian crude oil to drop sharply. Had the NOP generated market power that the majors could exploit to their own advantage, they would quickly have been able to raise crude oil prices — the fact that Canadian prices did not increase shows that the Ontario refiners did not ''exploit'' the NOP as the Director alleges.

The relative price of Canadian crude oil remained low until 1970, when President Nixon imposed mandatory quotas on Canadian imports. Only then did the price of Canadian crude oil begin to increase toward the relative levels that prevailed in 1963.[83]

TABLE 2

Relative Prices of Canadian and U.S. Crude Oils, 1959-1973.

Year	Canadian Redwater 35.2°	Price in U.S. Dollars*/ Oklahoma Kansas 36°-36.9°	West-Texas Sour 30°-30.9°	Canadian Price as a Percentage of U.S. Price**/
1959	2.49	2.97	2.65	88.6%
1960	2.48	2.97	2.65	88.3%
1961	2.45	2.97	2.65	87.2%
1962	2.43	2.97	2.65	86.5%
1963	2.43	2.97	2.65	86.5%
1964	2.43	2.92	2.65	87.3%
1965	2.43	2.92	2.65	87.3%
1966	2.43	3.00	2.80	83.8%
1967	2.43	3.07	2.80	82.8%
1968	2.43	3.12	2.80	82.1%
1969	2.43	3.17	3.06	78.0%
1970	2.75	3.52	3.20	81.8%
1971	2.84	3.52	3.35	82.7%
1972	2.98	3.52	3.35	86.8%
1973	3.18	5.17***/	5.00***/	62.5%

*/ Prices are measured as of December 31 of each year. Prices for Canadian Redwater crude oil were obtained from Vol. II, Table 22, and were converted to U.S. dollars by applying the exchange rates listed in Table B-7 of Volume III. The price data for Oklahoma-Kansas and West-Texas sour crude oils were obtained from United States House of Representatives, Committee on Science and Technology, *Energy Facts II*, 345 (1975). See Tab 18 Volume D.

**/ These percentages are calculated as the average of the ratios of Canadian Redwater prices to Oklahoma-Kansas and West-Texas sour prices.

***/ In 1973 the United States imposed price controls that set different prices for "old" and "new" oil. These prices are "old" oil prices. Comparable "new" oil prices were $9.50 and $9.51 per barrel, see Tab 18, Volume D.

(ii) The Large Ontario Refiners Were Net Crude Oil Purchasers

There is an additional reason why it is irrational to believe that the large Ontario refiners would seek to "exploit" the NOP by increasing Canadian crude oil price. The large Ontario refiners have never been able to produce enough to satisfy their own refining needs for Canadian crude oil. Hence, all the large Ontario refiners purchased large quantities of crude oil from non-affiliated producers. According to the Green Books, during the years 1956 to 1968, Imperial's domestic production never amounted to more than 41.8% of its refinery run. Gulf never achieved a self-sufficiency greater than 41.1%, Shell's self-sufficiency was always below 36%, and Texaco Canada's self-sufficiency (excluding Texaco Exploration Canada Ltd. production) was estimated as never more than 12.4%.[84]

As a result of the large Ontario refiners' net purchaser positions, any increase in domestic crude oil prices would reduce domestic operating profits. For example, in 1960 Imperial purchased 250,000 barrels of Canadian crude oil a day but produced only 82,000 barrels a day of its own crude oil.[85] If the price of Canadian crude oil increased by $1 a barrel, Imperial would

earn an additional $82,000 a day from sales of its crude oil. However, it would have to pay an additional $250,000 a day to unaffiliated producers. The net effect of this price increase would be a loss of $163,000 a day.

The Green Books explicitly recognize that crude oil price increases would cause losses for the large Ontario refiners. The Green Books quote an Imperial study that concludes that a 25-cent a barrel price increase would (a) increase profits refiners made on sales of their own crude oil, but (b) increase the cost of crude oil acquired for their refining operations by an even larger amount, so that the net result would be (c) losses to the entire operation. [86] Thus, it should come as no surprise that internal Imperial documents recommend against increases in Canadian crude oil postings ''because of Imperial's net purchaser position.''[87]

The Director seeks to downplay this conclusion by assuming that the Ontario refiners could recover cost increases through higher consumer prices and therefore would not object to crude oil price increases. This analysis is incorrect for two reasons. First, cost increases always reduce a firm's profits and not even the strongest monopolist is able to increase prices so that profits after a cost increase are as large as they were before costs increased.[88] Second, because the NEB allowed firms without Ontario refineries to ship product made from cheap foreign crude oil westward across the NOP line, prices in Ontario reflected the low offshore prices, and Ontario refiners were not free to set prices solely on the basis of domestic conditions.[89]

B. Governmental Pressures To Control the Flow of Canadian Exports

(i) The NOP's Success

The major goal of the NOP was to promote Canadian crude oil exports to the United States. However, in the early years of the NOP there was concern that production would not reach desired levels.[90] This concern was reflected in Parliamentary discussion of a possible need for mandatory regulations to insure that the NOP would achieve its production goals.[91]

But the NOP was a tremendous success in promoting exports and domestic production. As illustrated in Table 1, Canadian exports increased almost ten-fold from 114 thousand barrels per day in 1960, the year before the NOP was adopted, to 1,139 million barrels per day in 1973, the last year the NOP was in operation. Moreover, the NOP increased utilization rates in Alberta's oil fields from 37% to about 90% in 1973 — the first time in many years the Alberta petroleum industry was operating close to capacity.[92]

Table 1 also shows that Canada's importance to the United States as a petroleum supplier increased during the NOP. In 1960 only 11.1% of U.S. petroleum imports came from Canada, but by 1970 over half of the United States' imports were shipped from Canada's fields.

(ii) United States Diplomatic Pressure To Restrain Canadian Crude Oil Exports

Had the price of Canadian crude oil been any lower, Canadian crude oil would have been even more attractive to U.S. consumers, and exports into the U.S. market would have grown at an even more rapid pace. But such a result would hardly have been welcome in Washington or by U.S. producers.

From the U.S. perspective, the major problem caused by the NOP was that ''reaction to the order to increase exports [was] almost too good.''[93] High Canadian import levels upset domestic U.S. producers whose crude oil was being displaced by the flood of Canadian production. The

growth in Canadian production during the early 1960's was also far in excess of what had been contemplated at the time of the U.S. decision to grant Canada an overland exemption. Thus, concerns over the security implications of U.S. reliance on Canadian crude oil again surfaced, and were accompanied by complaints from U.S. producers objecting to Canadian competition.[94]

United States Secretary of the Interior Udall worried publicly that "if the NOP has marked and abrupt adverse effects on our petroleum industry, such actions would undoubtedly furnish the basis for a pattern of United States oil import controls as they pertain to Canadian crude oil, condensates and natural gas liquids."[95] Udall's threat was not an isolated event, and the entire 1960's were marked by repeated United States use of "jawbone techniques to hold down the increase of Canadian imports, both by warnings to companies and by negotiations with the Canadian government."[96]

The Director's report recognizes United States pressure and the effect it has on the operation of the large Ontario refiners. The Green Books recognize that "the United States made it clear to the Canadian industry via its communications with the National Energy Board that Canadian exports were directly related to the amount of Canadian crude oil consumed in Canada,"and that this position remained unchanged throughout most of the decade."[97] In effect, such warnings tied Canada's export policy to be continued maintenance of the NOP Line. They also put Canada on notice that her continued exemption from U.S. import restraints depended on her ability to maintain sales of Canadian crude oil in areas such as Ontario.

The Report also makes clear that the United States' concerns were passed from the Canadian government on to the majors. For example, in April 1961 the Chairman of the National Energy Board informed the President of Imperial that

> U.S./Canada relations on Canadian exports seem to be quite healthy but one of the principal keys is what progress Canada makes in displacing imports (other than unbalanced requirements) into Ontario.[98]

The Director also cites a 1966 communication between the Chairman of the NEB and Imperial saying that "[i]n the past it has been necessary to show officials in Washington that growth in Canadian crude oil sales is split about 50/50 between Canadian and U.S. markets." Similar communications also recognize that after 1966 "much more rigid enforcement of the National Oil Policy Line" would be "essential" to prevent exports to the U.S. from rising to too high a level.[99] The reason for this concludion is obvious: in the absence of enforcement of the NOP line, cheap foreign imports would satisfy a greater share of Canadian domestic demand, and the U.S. would be faced with even greater exports of Canadian crude oil.

Canadians were, moreover, reported to be "a bit embarrassed — and apprehensive" about the amount by which exports exceeded projections.[100] Thus, the NEB "used private suasion to delay further exports and thus avoid provoking Washington to crack down on imports from Canada."[101] Indeed, it was reported that "officials of exporting companies and the Canadian Government expressed determination not to jeopardize their free access to the U.S. market," and Canada "reassured the U.S. of its intentions not to violate the spirit of the import program."[102]

The NEB's involvement with the majors was characteristic of its behaviour throughout the NOP. As a Texaco Canada employee observed, "the relationship of the National Energy Board with the industry is on an informal basis and discussions are held as necessary to solve problems."[103] But all was not give-and-take because "if the National Energy Board's views do not prevail the legal machinery can quickly be enacted to give it any authority necessary."[104]

While Washington and Ottawa officially denied any "gentleman's agreement" to limit exports, industry observers saw strong indications that Canada relied on informal measures to control the flow of crude oil so as not to upset the delicate political balance.[105] Indeed, the Director himself suggests that in late 1961 and early 1962 the large Ontario refiners increased crude oil prices in response to devaluation of the Canadian dollar only because they felt "that there was a danger that exports would expand too quickly and that Canada's exemption from the American quota system would be revoked."[106]

The net effect of the pressure applied by the United States was, as Dr. Eglington explained, that "from a political perspective it was not possible to increase exports a lot faster."[107] Thus, in a meeting between the NEB and representatives of Shell, it was mentioned that "it would not . . . be a satisfactory solution for Canada to appear to take advantage of its overland supply privilege by reducing the price of Alberta crude oil . . ."[108] For had Alberta prices declined and the purchase of Canadian exports increased, U.S. efforts to impose restraints on Canadian shipments could have been more severe than the steps finally taken in the secret 1967 U.S.-Canada agreement.

(iii) The 1967 Secret Agreement

In 1967 Canada sought to complete a loop of the Interprovincial Pipeline across U.S. territory. A Presidential permit for a border-crossing was, however, necessary in order to begin construction. Canada's desire for the permit gave the United States leverage in her longstanding attempts to reduce Canadian exports, and in return for the Presidential permit the United States extracted a variety of concessions from the Canadian Government.[109] Both governments agreed to keep the pact secret and did not reveal its terms until forced to do so in 1970 because of litigation.[110] Among the commitments given by Canada were assurances that:

(a) Canada "short of imposing formal export controls" would "ensure" that exports to all but the West Coast of the United States did not exceed 280,000 barrels per day in 1968;

(b) From 1969 through 1971 exports would not grow at an annual rate in excess of 26,000 barrels per day;

(c) No sales of Canadian crude oil would be made from the completed loop in the Chicago area prior to 1970;

(d) Canada would "exert every effort to ensure that Canadian exports of crude oil do not displace local [United States] production of crude oil in those states served by Canadian crude oil; and

(e) "Only in the event of exceptional or emergency circumstances" would exports be allowed to "exceed the specified limits made under the above commitments."[111]

While both governments kept the agreement secret from the public, it was not "of course" kept secret "from affected oil companies on whose cooperation enforcement of the agreement depended."[112]

(iv) Mandatory United States Quotas on Canadian Exports

Despite the relatively modest growth rates contemplated in the 1967 accord, Canadian exports grew by 20% in 1969, and by another 20% in 1970, thus pushing 1970's exports to a level 44% above 1968's.[113] This rapid growth of exports to the U.S. violated the 1967 agreement and posed a threat to Canada's continued exemption from U.S. import restrictions.

This threat was not lost on the Canadian Government or on Canadian producers. The Director recognizes that in 1969 and 1970 major price increases were posted for United States crude oil and that unless Canada also increased its crude oil prices "the rapid expansion of Canadian crude oil exports to the United States [would threaten] the collapse of the voluntary quota system."[114] Consistent with this observation is the comment attributed to Imperial that "to maintain political limitations, some form of mandatory control, (likely for Canadian crude oil) would have to replace the present voluntary arrangement for the export market."[115]

The Director says that, in March 1969, Imperial recognized exports for the year would exceed by 100,000 barrels per day the "voluntary quotas of [300,000 barrels per day] that had been set by the United States Department of the Interior."[116] Imperial "concluded that Canadian crude oil prices would have to be increased by about 25 cents per barrel to suppress burgeoning American demand."[117] This price increase "would have decreased imports from Canada to a level more tolerable to American authorities."[118] But prices did not increase and exports continued to grow.

Canada's violation of the 1967 agreement caused great concern among United States producers and in the U.S. government. In February 1970 Canadian exports reached a peak of 550,000 barrels a day, well in excess of the 395,000 barrels contemplated by the 1967 accord. In 1970 Canadian producers also refused to follow a 15-cent increase in the price of domestic U.S. production — again behaving in a manner inconsistent with the Director's "exploitation" theory.[119] The White House thereupon concluded that "voluntary controls are not workable,"[120] and, on March 10, 1970, the United States, without warning, announced that mandatory controls would be placed on Canadian crude oil.[121]

The announcement "sent a shock wave through the industry."[122] Among other things, Canadians felt quotas would "dampen petroleum exploration incentives and retard [ ] leasing and research and development efforts in the tar sands."[123] The presidents of both Imperial and Gulf joined in the criticism of U.S. policy and issued separate statements indicating that "they did not like the cutback."[124]

The popular perception of the United States' motive for imposing the quotas had nothing to do with President Nixon's proclaimed "national security" concerns.[125] Instead, the U.S. actions were seen, both in Canada and the U.S., as a U.S. effort to gain leverage in future "negotiations over long-term access to Canadian fuels."[126]

If the import restrictions remained in place Canada would lose a significant portion of her only export market, and the production gains achieved under the NOP would come to an abrupt halt. It was therefore important for Canada to neutralize the U.S. security rationale for Canadian quotas, and reopen U.S. borders for Canadian crude oil. The easiest means of achieving this result was to strengthen the NOP line and enforce it against companies without Ontario refineries who had been shipping product refined from cheap offshore crude oil westward into Canada, and undercutting product refined from domestic Canadian crude oil.

(v) The NOP Line Becomes Mandatory

When the NOP line was first established in 1961, the National Energy Board was given the responsibility of ensuring compliance with the Government's policy. The NEB's authority was backed with continuing threats of legislation against the Ontario refiners if they did not comply with the Government's requests.[127]

Though the Ontario refiners were pressured to comply with the NOP, companies without Ontario refineries were not subject to the same Government intervention.[128] Soon after the NOP was adopted the price of imported crude oil fell and it became profitable for firms who had no obligation to buy Canadian crude oil to ship products made from low-priced imported crude oil into the high-priced Ontario market.

Because the volume of crude oil crossing the NOP line grew at the same time that exports to the U.S. were booming, it became possible to argue that transshipment contributed to the high and growing level of Canadian exports. Thus, shipments across the NOP line fueled U.S. concerns over the security implications of Canadian exports, and, in his public announcement of mandatory quotas, President Nixon specifically referred to security concerns as justification for his actions.[129]

It is consequently not surprising that soon after the U.S. quota announcement Canada sought to make the NOP mandatory and thereby undercut the national security rationale for quotas. On the floor of Parliament, the decision to make the NOP mandatory was specifically linked to President Nixon's decision to impose mandatory quotas,[130] and, in May 1970, about two months after the U.S. imposed its import controls, Section 87 of the NEB Act was proclaimed to allow the Board to license the flow of crude oil into Western Canada.[131]

This decision to make the NOP line mandatory was welcomed by the NEB which was glad to be rid of its "arduous" and "impossible task of administering agreements relating to crude oil exports on a voluntary basis."[132] Indeed, the decision was also supported by the province of Ontario which, according to the Director's theory, should have been strongly opposed to any attempt to make the NOP line mandatory. The Ontario Government had "mixed feelings" about the decision to make the NOP mandatory because it would have liked access to cheaper foreign crude oil. However, on balance it "accepted the national oil policy and the higher retail prices entailed by this policy in return for the concentration and expansion of a large refining and petrochemical industry in the province."[133]

The NEB moved quickly to exercise its new authority over imports and in 1971 substantially reduced the movement of foreign crude oil into Ontario.[134] This tight enforcement of the NOP was soon followed by a U.S. decision to increase the level of Canadian imports allowable under the quota program. In December of 1971 the Canadian quota was raised to 540,000 barrels per day for all portions of the U.S. except for the West Coast.[135] The relaxed U.S. quotas were paralleled by healthy growth in Canadian exports. According to the Director, Canadian exports to the U.S. grew by 20% in 1971,[136] and according to the NEB, exports in 1972 increased by 27% over 1971 levels.[137]

While Canada initially welcomed the relaxed U.S. attitude towards imports, in the spring of 1973 Canada's stance toward exports began to shift. Concern grew that Canada's high export level was depleting her resources at too rapid a pace. In early 1973, when the level of U.S. demand "threatened the continuity of supply of Canadian crude oil to domestic refiners

dependent on it,'' the NEB recommended that controls be placed on crude oil exports and received such control authority in March of 1973.[138]

Then, in the Fall of 1973, United States' and world crude oil prices rose sharply and threatened to carry domestic Canadian prices along with them. In order to maintain low domestic prices, the Canadian Government, on September 4, 1973, asked oil firms to refrain voluntarily from further price increases until January 30, 1974.[139] However, because of the artificially frozen price of Canadian production, exports to the United States were relatively underpriced. This situation threatened to create even greater U.S. demand for Canadian production.

The Canadian Government took actions on two fronts to adjust for the imbalance between foreign and domestic prices. First, the NEB denied all applications for the export of petroleum filed in October, 1973. Second, Canada announced an export tax on crude oil.[140]

Also, on September 6, 1973, the Canadian Government announced plans to increase Canada's reliance on domestic crude oil by extending a petroleum pipeline from Sarnia to Montreal. This decision effectively ended the separation of the Canadian market into domestically-supplied and import-supplied sectors.

Thus, by the end of 1973, changed world circumstances caused Canadian policy to do a total about-face from the position adopted in the Borden Report. Instead of promoting exports as a means of stimulating development of Canada's oil fields, exports were restricted, licensed, and taxed.

C. The Costs of Complying with the NOP

Adoption of the NOP was not the great bonanza for the large Ontario refiners portrayed by the Director. To the contrary, the large Ontario refiners were forced to bear two types of costs under the NOP that were not imposed upon Canadian producers who were not affiliated with refiners. First, the majors had to construct new refineries west of the NOP line. Second, to the extent that the NEB allowed product to flow westward across the NOP line the Ontario refiners found themselves trapped in a squeeze: they were required to use high-priced Canadian crude oil but had to compete with products made from low-priced imports.[141]

(i) Large Ontario Refiners Made Additional Capital Commitments in Ontario

Once the NOP was put in place, the large Ontario refiners were on notice that they would have to phase out approximately 50,000 barrels per day of refined product and 10,000 barrels per day of crude oil shipped from Montreal to Ontario.[142] To substitute for this lost production, the Ontario refiners had to increase their runs of Canadian crude oil. Thus, Ontario refineries without sufficient capacity were forced by the NOP to make major commitments for new refinery facilities.[143] In addition, Ontario refiners who substituted production made from Canadian crude oil for refined products that were previously shipped from Montreal also found themselves with expensive excess capacity in their Montreal refineries.

Texaco Canada and Shell Canada, because they accounted for over half the 50,000 barrels per day of refined product that moved from Montreal to Ontario prior to the NOP, were most affected by the need to expand Ontario refining capacity.[144] Shell Canada, as the Director concedes, was ''the first to build new facilities in Ontario to comply with the

National Oil Policy.''[145] The cost of Shell Canada's ''premature'' capital investment in Ontario refining facilities was estimated in the Green Books at about $37 million.[146]

Texaco Canada increased its capacity at Port Credit, and in the late 1960's committed over $50 million to the construction of a new refinery at Nanticoke in Ontario. Texaco Canada's decision to build Nanticoke was described by J. J. Greene, Minister of Energy, Mines and Resources, as ''an important development for the producing industry.''[147] The decision was taken

> at a time when costs of money [were] extremely high and in spite of the low refining profitability which is realized where product has to be manufactured from relatively expensive custom crude oil and sold in markets where prices are still determined at the margin by competition of foreign-origin material.[148]

Thus, the large investments made by the Ontario refiners ''were an essential final link in the chain of investment required to help realize western Canada's oil resource potential'' and were necessary for ''continued attainment of the oil policy objective'' presented by the NOP.[149]

(ii) Shipments Across the NOP Line

As Mr. Greene recognized when he observed that prices in Ontario were ''determined at the margin by competition of foreign-origin material,''[150] a second cost the NOP imposed on the Ontario refiners was the loss incurred when the Ontario refiners found themselves competing with importers who did not have Ontario refineries and who, in violation of the NOP, shipped cheap product made from foreign crude oil westward across the NOP Line and undercut product made from higher-priced domestic crude oil. Dr. Eglington explained that between 1961 and 1970 ''there was a stick carried behind the backs of the Board and the Government to assure that the National Oil Policy was followed to the degree possible.''[151] The ''stick'' the NEB used to enforce the NOP line was not, however, applied evenhandedly, and the Ontario refiners were informed that ''if the industry did not comply, the necessary legislation would be enacted to provide mandatory compliance.''[152]

While the NEB took a tough stance with Ontario refiners, it took no strong actions against importers without Ontario refineries who sought to profit by shipping cheap foreign crude oil into the high-priced Ontario market. Indeed, Dr. Eglington suggested the NEB sanctioned shipments by unaffiliated importers across the NOP line[153] specifically with the goal of moderating prices in Ontario.[154]

The effect of the NEB's willingness to allow importers without Ontario refineries to ship across the NOP while simultaneously enforcing the NOP more rigorously against the Ontario refiners, was to squeeze the Ontario refiners' operations: the Ontario refiners were forced to buy expensive Canadian crude oil but to sell in competition with cheaper imported product.[155] This squeeze was not the result of legitimate competition, or of an economic advantage held by the unaffiliated importers. Instead, it was a consequence of inequitable enforcement of the NOP and of violations by some of Texaco Canada's competitors who sought to profit by trading on the Ontario-Montreal margins that were the natural consequence of the NOP.

Ontario refiners who undertook expensive construction and expansion programs, and who designed their new facilities to run high-priced Canadian crude oil, did so in the legitimate expectation that the Government would enforce the NOP line so as not to allow prices to drop to a

level where their refinery investments would incur losses. The requests by Ontario refiners to the NEB that it enforce the NOP were simple requests that the Government abide by the understandings and policies upon which Ontario refiners reasonably and legitimately relied to make substantial investments[156] — they were not, as the Director alleges, blatant protectionist steps aimed at insulating the Ontario refiners from declining offshore prices.[157]

D. The Large Ontario Refiners Had Significantly Different Incentives Regarding the NOP

Throughout the Green Books, the Director plays on the recurrent theme that the large Canadian oil companies sought to ''harmonize'' their activities so as to achieve anticompetitive market outcomes. But when it comes to the NOP, even the Director concedes that the large Canadian oil firms had significantly different incentives and did not share common interests.[158]

In particular, Ontario refiners who had relatively little domestic Canadian production, were harmed by the NOP more than Ontario refiners who could supply their needs with larger amounts of owned crude oil.[159] Moreover, Ontario refiners who had to construct or expand their facilities had greater objections to the NOP than refiners who had sufficient capacity in place in Ontario.

Differences among the Ontario refiners over the NOP were, in fact, quite sharp. In 1961, when Shell Canada requested permission to continue shipping across the NOP line for two years until it could complete its Ontario refinery, Imperial ''indicated strong opposition'' because any such decision would be ''preferential treatment for a company which contributed little or nothing to the program.'' Imperial said such action would ''constitute a precedent for importers and other refiners to fall back on,'' would offer Shell Canada an ''unfair marketing advantage,'' and would be ''incompatible with U.S./Canada agreements on this program.''[160]

Thus, far from there being ''harmony'' over the NOP, the Ontario refiners engaged in significant disagreements and disputes. Indeed, perhaps the only position shared strongly by the Ontario refiners was that the NOP was preferable to the Montreal pipeline proposal — a position that is consistent with the interests of Canadian consumers in maintaining a flow of low-priced foreign crude oil into the Quebec market.

PART IV

THE DIRECTOR'S MEASURE OF NOP RELATED "OVERCHARGES"

A. The Director's Measure of "Overcharges" Ignores the Realities of the NOP.

One fourth of the Director's highly publicized allegation of a multibillion overcharge to Canadian consumers consists of $3.1 billion (which the Director inflates to $22.6 billion by artful but meaningless "present value" calculations) [161] in overcharges for domestic crude oil used in Ontario. This $3.1 billion figure was derived by taking an estimate of the "excess cost" of domestic crude oil received by Ontario refiners and multiplying it by the total amount of domestic crude oil refined in Ontario.[162]

The Director claims that two factors should be taken into account in estimating the "excess cost" of crude oil in Ontario. The first factor is the difference between crude oil prices charged in Montreal and those charged in Toronto (less the cost of transporting crude oil from Montreal to Toronto). The second component of the excess cost is the amount by which crude oil prices in Montreal were allegedly inflated by the Ontario refiners' transfer pricing practices. The Director reasons that if lower prices existed in Montreal then, in the absence of the NOP, these prices would also have found their way to the Ontario market. Table A-9 in the Appendix to Volume I of the Green Books shows that well over half the alleged overcharges to Ontario consumers result from the Director's claim that the transfer price of crude oil imports into Montreal was too high. Thus, the largest part of the Director's Ontario "overcharge" allegation is, in reality, a repetition of the Director's charge, described in detail in Volume III of the Green Books, that transfer prices were artificially inflated.[163]

Whatever position one might take on the transfer price issue, it is clear that once the NOP was in place, the price of crude oil in Ontario was, as a result of conscious government policy, insulated from world market prices. For this reason alone, a comparison between Toronto crude oil costs and some artificial construct of a "world market" price (below actual Montreal prices) are meaningless. Any attempt to cut Ontario prices to the Director's assumed level, or even to the Montreal level, would have been vigorously opposed by the United States because of the higher exports the low prices would have stimulated, and would have been contrary to the NOP's stated export expansion goal.

Lower transfer prices could therefore not have been passed on to the Ontario market while still maintaining Canada's exemption from U.S. quotas and expanding exports into the U.S. Also, lower prices in the Ontario market would have reduced production in Canada's oil fields and reduced wellhead prices for Canadian producers who, it again deserves to be emphasized, were predominantly independent producers without refinery interests.

Thus, implicit in the Director's "overcharge" estimate is the silent and unsupportable assumption that Canada could have retained the desired benefits of the NOP in terms of production incentives and higher exports to the U.S. while allowing Ontario prices to fall and permitting unlimited amounts of imports to move across the NOP Line into Ontario. Canada would thus have been supplied largely with lower cost imported crude oil, while Canada's own more expensive crude oil was being sold into the protected U.S. market — precisely the transhipping scenario that the U.S. sought to avoid. But given the history of the NOP, U.S. actions during the 1950's, 1960's and 1970's, and the demands of Canada's independent producers, it is inconceivable that the Director's imaginary world could ever have come to pass.[164]

Thus, the price level in the Ontario market cannot logically be viewed as a measure of the costs of any supposed attempt by Ontario refiners to ''exploit'' the NOP. The price levels reflected governmental decisions adopted after careful consideration by officials in charge of formulating national policies.

B. The Director's Estimate is Also Misleading Because it Overlooks the Benefits of the NOP

Even if one strives to make sense of the Director's estimate of ''overcharges'' as a measure of the effect of the NOP on Canada, there are such serious deficiencies and oversights in the Director's approach that it must be rejected out of hand. The Director considers only the costs the NOP imposed on Ontario consumers but fails to consider the possibility that the NOP generated offsetting benefits for Ontario as a province and for Canada as a whole.

In particular the Director fails to consider: (a) The extent to which producers without refining facilities were the beneficiaries of higher prices caused by the NOP; (b) The beneficial effects of the NOP on development of Canada's domestic petroleum industry; (c) The beneficial effects of the NOP on Canada's trade balance; and (d) The NOP's stimulus to the development of Ontario's petrochemical industry. Indeed, Prime Minister Trudeau, who has evaluated the NOP from the perspective of its effect on Canada as a whole — and not just through the narrow glass of the NOP's effects on consumers in one province — concluded that the NOP was beneficial to Canada and was a policy appropriate for its time.

(i) The Ontario ''Overcharges'' Were Not ''Costs'' to Canada

The Director's ''overcharge'' estimate calculates a hypothetical cost imposed on Ontario consumers and then simply stops. The Director does not consider where the sums represented by these alleged ''overcharges'' went, and who might have benefitted from those higher payments.

Because all petroleum products consumed in Ontario during the NOP were refined from crude oil produced in Canada's own oil fields,[165] any ''excess'' crude oil costs paid by Ontario consumers were paid to Canadian crude oil producers. The most significant beneficiaries of these payments were producers without refinery interests who, during the period of the NOP, owned over 70% of the crude oil and gas liquids production in Canada.[166] Thus, while it might be argued that the NOP caused Ontario consumers to pay higher prices for Canadian crude oil, these ''overcharges'' remained in Canada, and viewed from the perspective of the Canadian economy as a whole, were not costs of the NOP.

(ii) The NOP Stimulated Canada's Petroleum Industry

The primary goal of the NOP was to pull Canada's domestic petroleum industry out of the doldrums of the late 1950's — an era characterized by high excess capacity and low incentives for exploration and development — and provide a stimulus for development of a large domestic petroleum sector. As a result of the NOP, Canadian production grew from 530,000 barrels per day in 1960 to 1,969,000 barrels per day in 1973 — almost a quadrupling in Canadian output.[167] During the NOP, exploration efforts also led to the discovery of seven major oil fields,[168] helped add 846,901,000 cubic metres, or 5.3 billion barrels, to Canadian crude oil reserves,[169] and provided incentives for the drilling of 39,969 new exploratory and development wells.[170]

Without the additional returns available to crude oil producers because of the NOP, the incentives for development of Canada's domestic reserves would have been significantly lower. Thus, there can be no assurance that Canada's domestic petroleum industry would have developed at an equivalent or satisfactory pace without the NOP, and the benefits from such development must be considered in any evaluation of the NOP.

(iii) The NOP Helped Canada Run a Trade Surplus in Her Petroleum Account

Because the NOP allowed Canada to maintain access to the high-priced U.S. market and, at the same time, allowed Canada to import relatively low-priced offshore crude oil, the NOP helped Canada run a substantial trade surplus in her crude oil account. As shown in Table 3, in the early years of the NOP, Canada imported more crude oil than she exported, and between 1961 and 1965 Canada ran a crude oil trade deficit of over $400 million. This trade deficit in the crude oil market was also typical of Canada's experience throughout the 1950's.[171]

But in 1966, with the help of the exports stimulated by the NOP, Canada's trade balance in the crude petroleum market turned the corner. As exports to the U.S. began to increase, and as U.S. prices began to rise, Canada began to show a surplus in her crude oil account that contributed over $1.6 billion to Canada's balance of trade over the remaining eight years of the NOP's existence. Thus, over the entire life of the NOP, the NOP helped bolster Canada's trade balance by more than $1.2 billion.

These figures may, in fact, understate the effect of the NOP on Canada's trade balances. Without the NOP, Canada's exports to the United States would have fallen precipitously, and Dagher estimates that in 1965 alone, had the Ontario refiners failed to comply with the NOP, Canada's foreign exchange costs would have increased by $171.1 million.[172]

Without the NOP's contributions to Canada's trade balances, there would have been greater pressure on the Canadian dollar throughout the NOP, and the Canadian dollar would not have been able to maintain the exchange rates described at Table B-7 of Volume III of the Director's Report.[173] These trade balance effects must also be considered in any evaluation of the consequences of the NOP.

TABLE 3

Canada's Crude Oil Trade Balance During the NOP, 1961-1973.

(Millions of Canadian Dollars)

	Value of Imports	Value of Exports	Trade Balance
1961	291,170	152,334	−138,836
1962	304,898	232,497	− 72,401
1963	334,761	233,867	−100,894
1964	320,637	262,023	− 58,614
1965	312,259	279,956	− 32,303
1966	299,001	321,681	22,680
1967	335,416	397,875	62,459
1968	372,586	446,413	73,827
1969	393,453	525,780	132,327
1970	415,161	649,075	233,914
1971	541,114	787,397	246,283
1972	680,743	1,007,505	326,762
1973	940,687	1,482,117	541,430
Total	5,541,886	6,778,520	1,236,634

Source: Statistics Canada, *Imports* Catalogue No. 65-203, Category 264-10 (1961-1973); Statistics Canada, *Exports*, Catalogue No. 65-202, Category 264-10 (1961-1973). See Tab 38, Volume D.

(iv) The NOP Allowed Ontario To Develop Her Petrochemical Industry

The Director's estimate of overcharges also fails to consider fully the effects of the NOP on the Ontario economy. Because the NOP prevented product from being shipped westward across the NOP line, the Ontario refiners were forced to make significant investments to expand and improve their facilities. Among the expenditures made or committed to during the NOP were Texaco Canada's expansion of its Port Credit facility, and its commitment to build a new refinery at Nanticoke. During the NOP, Ontario refinery capacity was also significantly increased by Imperial, Shell Canada, Gulf Canada, and B.P. Canada.[174]

Ontario placed a great value on its large petrochemical industry. Indeed, when Canada was debating whether to make the NOP line mandatory, Ontario had an opportunity to object to the NOP precisely on grounds that a mandatory NOP would impose additional costs on Ontario consumers. Instead, Ontario weighed the benefits of the petrochemical industry promoted by the NOP against the higher cost of a mandatory NOP, and decided it would rather keep the NOP, and the petrochemical industry it spawned in the province, rather than abandon the industry.[175]

Thus, the Director's evaluation of the NOP's effects on Ontario is at odds with the decision reached by the Ontario Government itself.

(v) Prime Minister Trudeau Has Praised the NOP as a Policy Appropriate for Its Time

Finally, it is significant to note that, unlike the Director, Prime Minister Trudeau recognizes that the "National Oil Policy, established in 1961 . . . [has] helped to develop what is a national and not purely provincial productive capacity."[176] In a broadcast speech to the nation, Prime Minister Trudeau discussed the effects of the NOP and concluded that, on balance, the NOP benefited all Canadians. He said

> "During the 1960's, consumers in Ontario and elsewhere paid at least $500 million more than they would have paid for foreign oil supplies — in order to help Alberta develop her oil industry. Ottawa vigorously promoted Alberta oil exports to the United States and provided many millions of dollars in incentives for the development of the industry. The people of Alberta benefitted: they have the lowest per capita provincial debt, and the lowest per capita tax load, in Canada. And all Canadians benefitted. A strong Alberta has meant a stronger Canada — a Canada in which Albertans contribute generously to the welfare and progress of the country as a whole. At the same time, the National Oil Policy enabled Quebec and the Maritime Provinces to continue to benefit from much lower-priced imported foreign oil."[177]

In this single passage, Prime Minister Trudeau recognizes four realities of the NOP that are nowhere found in the Director's Report: (1) the "overcharges" in Ontario were payments that stayed within Canada and helped the nation develop its dometic oil industry; (2) the NOP generated exports that were beneficial for Canada; (3) the NOP allowed Quebec and the Maritimes to continue to rely on cheap foreign crude oil — something that would not have been possible under the competing Montreal pipeline proposal; and (4) on balance, "all Canadians benefited" from the NOP. The Prime Minister's perspective on the NOP is apparently different from the Director's.[178]

According to Dr. Eglington, and to the best of our knowledge, the Green Books are the only study ever to have concluded that the NOP was not beneficial to the Canadian economy as a whole.[179] In light of the fact that the Green Books consider only the costs of the NOP and are blind to its benefits, it is hardly surprising that they reach such a one-sided conclusion, or that they stand alone in their criticism.

PART V

Conclusion

In sum, there are three fundamental flaws in the Director's allegation of an Ontario overcharge.

First, the higher prices that prevailed in Ontario as a result of the NOP were consistent with the behaviour of a competitive market subject to the sort of government regulation imposed both by the NOP and U.S. pressures to restrain Canadian exports. Thus, the higher prices that prevailed in Ontario are not evidence of anticompetitive conduct.

Second, the NOP was adopted by the Canadian Government because it was reasonably perceived as the best energy policy for Canada as a whole. It allowed eastern Canada to continue using cheap imported crude oil — an option that would have been partially lost with the Montreal pipeline proposal — and provided a stimulus for development of Canada's petroleum industry through exports to the high-priced U.S. market. In essence the NOP provided a mechanism whereby U.S. consumers could be charged for development of Canada's oil industry. The private interests of the Ontario refiners were not the driving force behind the decision to adopt the NOP and retain it as Canada's energy policy for twelve years.

Third, the NOP was successful in achieving its goals. There is no suggestion in the Green Books that the NOP could have succeeded without excluding foreign crude oil from Ontario, and the Green Books recognize that the NOP line was essential in order to maintain Canada's special status under U.S. import restraints. Thus, the higher costs that prevailed in Ontario were a natural and competitive consequence of the Government's decision to assuage U.S. concerns and to pursue the NOP's export strategy. And, if the Director's complaint is that the NOP was unwise, or that no costs should have been imposed on Ontario consumers, then his complaint should be lodged against the Ottawa Government — not against the majors.

For all these reasons, the Director's estimate of "overcharges" has nothing to do with the competitive performance of the Ontario refiners. If anything, the overcharge estimates are the result of an inartful attempt to measure the costs imposed on Ontario consumers by the Government's decision to adopt the NOP, while ignoring any beneficial consequences of the NOP for the Canadian economy. Thus, the Director's estimate of an Ontario "overcharge" is (a) irrelevant to an assessment of the competitive performance of the petroleum industry, (b) seriously deficient as a measure of the effects of the NOP, and (c) should be rejected as a criticism of the Ontario refiners' performance.

NOTES

1. *See, e.g.*, Green Books Vol. I, at 164, Vol. II, at 53, 65, 66, 70, 82. (Hereinafter cited by volume and page number only).
2. Vol. I, at 164-65, 174.
3. *See, e.g.*, Vol. II, at 2-4.
4. Transcript, Vol. 34, pp. 7508-9. See Tab 1, Volume D.
5. J. H. Dagher, *Effects of the National Oil Policy on the Ontario Refining Industry*, 822 (unpublished Ph.D. thesis, McGill Univ. 1968). See Tab 2, Volume D.
6. Rt. Hon. P. E. Trudeau, *Statement on the Energy Crisis*, delivered on National Television and Radio, Nov. 22, 1973. See Tab 3, Volume D.
7. Volume II, at page 4.
8. *Idem*.
9. Vol. II, at 3.
10. Royal Commission on Energy, *Second Report* 11 (July 1959) (hereinafter cited as *Second Borden Report*). See Tab 4, Volume D.
11. In the decade following the Leduc discovery there were 28 discoveries of major fields in Canada. *International Petroleum Encyclopedia*, 230, 232 (1980). See Tab 5, Volume D.
12. *Second Borden Report* at 11. See Tab 4, Volume D.
13. Waverman, *The Reluctant Bride*, in E. W. Erikson and L. Waverman, *The Energy Question; An International Failure of Policy*, Vol. 2, 217, 220 (1974), see Tab 6, Volume D; *Second Borden Report* at 13, see Tab 4, Volume D.
14. *Idem*.
15. *Second Borden Report* at 15, see Tab 4, Volume D.
16. *Idem*.
17. As of 1951 the pipeline extended only to Superior, Wisconsin and oil was then shipped by lake tanker to the refineries at Sarnia. In 1953 the pipeline was extended to Sarnia, and in 1957 a further extension brought the pipeline to Toronto. *Second Borden Report* at 15, see Tab 4, Volume D.
18. Demand in British Columbia was inadequate to justify the large investment required to build a pipeline. It was therefore necessary to tap U.S. markets in the energy-short states of Oregon and Washington to assemble a market large enough to make construction feasible. In 1952 Canada succeeded in obtaining commitments from U.S. refineries to accept Canadian crude and, on the basis of these commitments, was able to complete the Trans Mountain pipeline in 1953. *Second Borden Report* at 17, see Tab 4, Volume D.
19. *See* pp. 14-15 *infra*.
20. Indeed, as we later demonstrate, because the Ontario refiners were net crude purchasers, increases in the wellhead price of Canadian crude would actually reduce their profitability. *See* pp. 14-15 *infra*.

21. The Green Books recognize that until the late 1950's the price of Canadian crude was determined largely by the domestic price of U.S. crude, because U.S. crude was the only competing crude laid down in Sarnia. As world prices began to decline, and imports began to find their way into Ontario, Canadian prices had to respond to offshore competition, Vol. II at 47. But once the NOP line was put in place, the Ontario market was isolated from world prices and Canadian oil again had to compete only with U.S. crude.

22. H. G. J. Aitken, *The Changing Structure of the Canadian Economy, with Particular Reference to the Influence of the United States,* in H. G. J. Aitken, *et. al, The American Economic Impact on Canada* 25 (1959), see Tab 7, Volume D. The two pipelines provided an outlet for 600,000 barrels of oil per day from Western Canada — a transportation capacity greater than the total demand for oil produced by Canadian wells. *Idem.* at 24.

23. *Second Borden Report* at 173, see Tab 4, Volume D.

24. Imperial Oil, *Second Submission,* Volume A, at I-2.

25. Dam, *Implementation of Import Quotas: The Case of Oil,* 14 J. Law & Economics 1, 5 (1971) (hereinafter cited as *Import Quotas*), see Tab 8, Volume D.

26. DeBanne, *Oil and Canadian Policy,* in E. Erickson & L. Waverman, *The Energy Question: An International Failure of Policy,* Vol. 2, 125, 131 (1974) (hereinafter cited as *Oil and Canadian Policy*), see Tab 9, Volume D.

27. As the Borden Commission observed, "agitation by sections of the [U.S.] oil producing industry against imports of foreign oils is not new" and dates back at least to the 1930's. *Second Borden Report* at 39, see Tab 4, Volume D.

28. For a discussion of U.S. security concerns over oil imports as a factor in the United States' decision to adopt import control programs *see Import Quotas* 3, see Tab 8, Volume D; D. Bohi and M. Russell, *Limiting Oil Imports* 23-30, 41-42 (1978) (hereinafter cited as *Limiting Oil Imports*), see Tab 10, Volume D; M. Adelman, *The World Petroleum Market* 153 (1972) (hereinafter cited as *The World Petroleum Market*), see Tab 11, Volume D; United States Cabinet Task Force on Oil Import Control, *The Oil Import Question* (1970), see Tab 12, Volume D; *The White House Report on Energy Supplies and Resource Policy* (Feb. 26, 1955), see Tab 13, Volume D.

29. For a discussion of the 1955 Voluntary Controls *see Import Quotas* 5-15, see Tab 8, Volume D; *Limiting Oil Imports* 21-45, see Tab 10, Volume D; *The World Petroleum Market* 150-151, 153-155, see Tab 11, Volume D.

30. *The World Petroleum Market* 154, see Tab 11, Volume D.

31. *Idem.*

32. *Idem.*

33. *Idem.*

34. See Table 1 at page 6, *infra.*

35. For a discussion of the 1957 Voluntary Quotas *see Limiting Oil Imports* 45-62, see Tab 10, Volume D; *Import Quotas* 5-14, see Tab 8, Volume D.

36. *Limiting Oil Imports* at 52, see Tab 8, Volume D.

37. *Second Borden Report* at 44, see Tab 4, Volume D.

38. *Idem*. at 43-44.

39. *Idem*. at 44.

40. For a more detailed explanation of the Mandatory Program *see Limiting Oil Imports* at 63-98, see Tab 10, Volume D; *Import Quotas* at 15-27, see Tab 8, Volume D; Lane, *The Mandatory Petroleum Price and Allocation Regulations: A History and Analysis*, Report to the American Petroleum Institute, 2-6, (May 1981), see Tab 16, Volume D.

41. *See Import Quotas* 28, see Tab 8, Volume D.

42. *Idem*. at 29 (''Canadian crude oil, although not so cheap as Middle Eastern crude oil, was still somewhat cheaper than domestic crude oil.'').

43. *Idem*. *Second Borden Report* at 125, see Tab 4, Volume D.

44. *See, e.g., Import Quotas* 31-32, see Tab 8, Volume D. Also, as Dagher has observed, the only justification for special treatment of Canadian oil was the security argument. And, whatever the validity of this argument, it ''would not be possible to present it with any degree of seriousness if Ontario was supplied largely from offshore sources when more easterly U.S. points were tied to Western Canadian sources of supply for security reasons.'' Dagher, *supra* note 5 at 811, see Tab 2, Volume D.

45. *See The World Petroleum Market* at 154, see Tab 11, Volume D.

46. *Import Quotas* 28-29, see Tab 8, Volume D. As a practical matter, this exemption could apply only to Canada and Mexico. But since Mexico was not in 1959 a significant exporter, the ''overland exemption'' was generally perceived as a special dispensation for Canadian oil.

47. *Second Borden Report* at vii, see Tab 4, Volume D.

48. *Idem*.

49. *Idem*. Appendixes C, D.

50. *Idem*. at 128.

51. *Idem*. at 118-119.

52. *Idem*. at 130, 140-141. Had the Montreal pipeline proposal been adopted, consumers in neither Quebec or Ontario would have been able to take full advantage of low-priced foreign oil. Thus, using the Director's method of analysis, the only alternative to the NOP considered by the Borden Commission would have resulted in ''overcharges'' significantly greater than those the Director claims the NOP caused in Ontario alone.

53. *Idem*. at 127, 141-142.

54. *Idem*. at 133. The Green Books also recognize that, as of the early 1960's, shifting Ontario from partial reliance on offshore crude to total reliance on domestic oil would not have caused price increases in Ontario. Drawing the NOP line along the Ottawa Valley was therefore ''no more than an acknowledgment of the status quo.'' Vol. II, at 13.

55. *Second Borden Report* at 133, see Tab 4, Volume D.

56. *Idem*. at 137.

57. *Idem*. at 135-136.

58. *Idem*. at 137.

59. *Idem*. The Borden Commission even noted that Canadian export restrictions might be necessary in order to assure that Canada would not violate the terms of quota exemptions offered by the U.S. *Idem*. at 125.

60. *Idem*. at 133. The Borden Commission also considered proposals that Canada conserve "its reserves of crude oil by importing foreign oil and utilizing it instead of domestic production." The Commission rejected this proposal because it would impede the exploration and development efforts necessary to make Canada's oil available for domestic use within a reasonable period of time. *Idem*. at 130-131.

61. *Idem*. at 144.

62. 2 Can. Parl. Deb. H. C., 1960-1961 Sess. 1641 (Statement of the Honourable George H. Hees, Minister of Trade and Commerce, announcing the National Oil Policy), see Tab 17, Volume D. The initial production target was set at 800,000 barrels per day in 1963, up from the 550,000 barrels per day produced in 1960.

63. Eglington Submission at 14, see Tab 14, Volume D.

64. *Idem*.

65. Vol. I, at 47.

66. Dagher, *supra* note 5, at 633-4.

67. Vol. I, at 51.

68. *See, e.g.*, Vol. II, at 53, 65, 66, 70, 82; Imperial Submission at I-7.

69. Vol. II, at 15.

70. Vol. II, at 4.

71. *Idem*.

72. Vol. I, at 164.

73. *Idem*.

74. *Idem*.

75. Vol. II, at 94.

76. Eglington Testimony at 7506, see Tab 1, Volume D.

77. *Idem*. at 7506-7507.

78. *Idem*. at 7508.

79. *Idem*.

80. *Idem*. at 7509.

81. The Green Books state that in 1961 Canadian crude had about a 30-cents per barrel advantage over the delivered price of American crude in Canadian markets. In U.S. markets, Canadian crudes had an advantage in excess of 20 cents. Vol. II, at 47-48. The Green Books recognize that in 1966 "American prices began to creep upward," while Canadian prices remained stable. Vol. II, at 55. Then, in 1969, there were "major increases" in posted U.S. prices that "raised the differential in favour of Canadian crudes in American markets." Vol. II, at 58. By April 1970, Canadian crudes enjoyed an advantage of "30 to 40 cents per barrel in Puget Sound and Chicago," Vol. II, at 60, and the gap did not widen even more only because of appreciation of the Canadian dollar relative to U.S. currency. Vol. II, at 61.

In 1971 and 1972 the Green Books claim relative prices remained stable. Vol. II, at 62. Dr. Eglington testified that the wellhead price for Canadian crude was stable throughout most of the NOP, but because of decreases in the IPL tariff, the implicit landed price of Canadian crude in Toronto dropped about 20 cents in the 1960's. Eglington Testimony at 7503, see Tab 1, Volume D. At the same time, the ''gap between U.S. prices and Canadian prices [was] . . . increasing,'' and ''there was a growing price advantage for Canadian crude.'' *Idem*. at 7504.

82. This comparison is intended only to illustrate trends in the relative prices of Canadian and U.S. crudes. Because of differences in the quality of the crudes, and transportation costs, it would be inaccurate to compare these prices to arrive at an absolute measure of the advantage Canadian crude had in the U.S. market.

83. The Green Books make this point when they observe that there was a ''long period during which Canadian crude was priced at a discount relative to United States crude . . .'' Vol. II, at 63. The relative advantage of Canadian crude came to an end only when conditions in the world market and in trade with the U.S. changed so that ''Canadian crude along with offshore imports became the marginal source of supply in the American market.'' *Idem.*

84. Vol. II, Table 8 at 24. Texaco Exploration production, which was owned by a firm distinct from Texaco Canada and had to be purchased by Texaco Canada, was significantly larger than Texaco Canada production. With Texaco Exploration production, Texaco's self-sufficiency ratio began at 41.4% in 1960 and rose to 88.8% in 1971. Self-sufficiency, including Texaco Exploration production, would have been attained only in 1972.

85. Vol. II, at 59.

86. Vol. II, at 60 *quoting* Document #89995, Imperial.

87. Vol. II, at 57.

88. The logic behind this result, which is well-known in economics, is quite simple. If a price increase can raise profits then a monopolist will simply increase price, whether or not there is a cost increase. Therefore, if a cost increase forces prices to rise, profits after the cost increase must be lower than profits before the cost increase. Put more technically, unless demand is totally inelastic — totally unresponsive to price changes — any movement upward of the firm's marginal cost curve will lead to an increase in price that will be *less* than the cost increase. The seller will therefore lose some profits. For a related demonstration showing that a cost increase can cause price to rise more in a competitive industry than in a monopolized industry, see McCloskey, *The Applied Theory of Price* 380 (1982), see Tab 19, Volume D.

89. *See* pages 21-22 *infra*.

90. 2 Can. Parl. Deb. H.C., 1960-1961 Sess. 1709 (Statements of Mr. A. Smith and Hon. George Hees), see Tab 20, Volume D.

91. *Idem.*

92. Eglington Testimony at 7502, see Tab 1, Volume D.

93. Kinney, *National Oil Policy is Boon to Canadian Industry,* Oil and Gas Journal, 134, 139 (Aug. 14, 1961), see Tab 21, Volume D.

94. For example, in 1966 the United States Oil Import Administration suggested that Canadian exports be held to a 5% growth rate, but exports continued to grow at a 10% pace. This

growth occurred despite "restrictionist pressures from independent producers." Lee, *Canada Eyes U.S. As An Oil Market*, New York Times, May 29, 1966, at F1, Col. 4, see Tab 22, Volume D.

95. Quoted in Kinney, *supra* note 93, at 141, see Tab 21, Volume D.

96. *Import Quotas* at 30, see Tab 8, Volume D; *see also Limiting Oil Imports* at 131, see Tab 10, Volume D.

97. Vol. II, at 52.

98. Vol. II, at 53, *quoting* Document #115906, April 17, 1961, Imperial.

99. Vol. II, at 54, *quoting* Document #89214 and Document #89215.

100. Ralph, *Things Looking Up For Canadian Oil, But Operators Have Fingers Crossed*, Oil & Gas Journal 142, 145 (Aug. 13, 1962), see Tab 23, Volume D.

101. *Idem.* at 144.

102. *Idem.*

103. Document #46431, Feb. 21, 1963, Texaco Canada.

104. *Idem.*

105. Ralph, *supra* note 100 at 150, see Tab 23, Volume D.

106. Vol. II, at 52. *See also* Ralph, *supra* note 100, at 150, Tab 23, Volume D.

107. Eglington Testimony at 7539, see Tab 1, Volume D.

108. Document #45318, Nov. 12, 1964, Shell. Present at the meeting were Mr. McKinnon, Chairman of the NEB, Dr. Howland, Vice Chairman of the NEB, three NEB staff members, and three representatives of Shell.

109. *Agreement Effected By Exchange of Notes*, Dated at Washington, September 25, 1967, entered into force September 25, 1967, 20 U.S. Treaties 4108 (Trade: Canadian Oil Exports), see Tab 24, Volume D.

110. The agreement eventually became public because of a conflict between Canada's secret commitment not to supply Chicago area consumers and a United States law that placed a duty upon pipeline operators to serve customers on a non-discriminatory basis. In 1969 the Clark Oil & Refining Company complained to the U.S. Interstate Commerce Commission that IPL's refusal to deliver crude oil to Clark's facilities near Chicago constituted a violation of IPL's duties under the Interstate Commerce Act. IPL interposed the secret U.S.-Canadian agreement in its defense. Only after this disclosure did the two governments publicly admit the existence of the agreement. *Clark Oil & Refining Corp.* v. *Lakehead Pipe Line Co.*, 337 I.C.C. 1 (1970), see Tab 25, Volume D.

111. *Agreement Effected by Exchange of Notes*, *supra* note 109, at 4109-4110, see Tab 24, Volume D.

112. *Import Quotas* at 31 note 98, see Tab 8, Volume D.

113. See Table 1, at page 6, *supra*.

114. Vol. II, at 58.

115. Vol. II, at 55 *quoting* Document #99800, March 6, 1969, Imperial.

116. Vol. II, at 59.

117. *Idem.*

118. *Idem.*

119. Eglington Testimony at 7530, see Tab 1, Volume D.

120. Naughton, *Nixon Sets Limit on Imports of Oil,* New York Times, March 11, 1970, at 61, Col. 3, see Tab 26, Volume D.

121. Pres. Proc. 3969, 35 Fed. Reg. 16357 (March 10, 1970), see Tab 27, Volume D. For a description of the quota restriction *see Limiting Oil Imports* at 131, Tab 10, Volume D.

122. Kinney, *Exports to U.S. Will Grow With or Without an Energy Agreement,* Oil & Gas Journal 50 (Aug. 31, 1970), see Tab 28, Volume D.

123. *The Energy Crisis: Impact of Canadian Policies,* Hearings before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs, 93d Cong., 1st Sess. 27 (1973), see Tab 29, Volume D.

124. *Annoyance in Canada,* New York Times, March 11, 1970 at 61, see Tab 30, Volume D.

125. Naughton, *supra* note 120, see Tab 26, Volume D.

126. *Annoyance in Canada,* New York Times, March 11, 1970 at 61, see Tab 30, Volume D. *See also* J. J. Greene, Minister of Energy, Mines & Resources, address to the Mid-Year Meeting of the Independent Petroleum Association of America 19 (May 12, 1970), Tab 31, Volume D. (''Canadian public opinion is interpreting this as a pressure play, to squeeze Canada into some form of energy deal which would not be to the Canadian advantage.'')

127. For an explanation of the compulsory nature of the NOP see Imperial Oil Ltd., *Second Submission* at I-7, I-8. *See also* Dagher, *supra* note 5, at 807, see Tab 2, Volume D. (the Government ''made it known that effective measures — not excluding mandatory controls on oil imports and exports — could be imposed if a voluntary approach did not produce the desired results.'')

128. Though the oil shipped westward across the NOP line that caused prices to decline in Ontario was brought in by firms without refineries in Ontario, it should be recognized that Ontario refiners occasionally shipped oil westward across the NOP in order to fulfill product demand. For example, in the early years of the NOP, before Texaco had sufficient refining capacity in Ontario, Texaco imported 4,820 barrels per day of middle distillates westward across the NOP line.

129. Naughton, *supra* note 120, see Tab 26, Volume D. *See also* Greene *supra,* note 126, at 21, Tab 31, Volume D. (Attempts to assure U.S. audience that transshipment was impossible.)

130. 7 Can. Parl. Deb. H.C., 1969-1970 Sess. 6672 (Statement of Mr. T. C. Douglas), see Tab 32, Volume D.

131. For a discussion of the decision to make the NOP line mandatory and that decision's significance in the context of U.S.-Canadian relations, *see* J. J. Greene, *supra* note 126, at 16, Tab 31, Volume D.

This effort to shore up the NOP line was not, however, immediately successful. Caloil, a company without an Ontario refinery, applied for authority to ship oil westward across the line. Caloil's application was rejected by the NEB and Caloil thereupon appealed the NEB's decision to the courts. Caloil's appeal was successful and the May 1970 proclamation was declared unconstitutional. The NEB regulations were then promptly amended and upheld in

response to a second Caloil challenge. *Caloil Inc. v. A. G. Can. (No. 1),* [1970] Ex. C. R. 512, 15 D. L. R. (3d) 164; *Caloil Inc. v. A. G. Can. (No. 2),* [1971] 4 W. W. R. 37, 20 D. L. R. (3d) 472, affirming [1970] Ex. C. R. 535, 15 D. L. R. (3d) 177.

132. National Energy Board, *Annual Report for the Year Ended 31 December 1970,* at 23-24. See Tab 33, Volume D.

133. *Oil and Canadian Policy, supra* note 26 at 131, see Tab 9, Volume D.

134. National Energy Board, *Annual Report for the Year Ended 31 December 1971* at 9. See Tab 33, Volume D.

135. Pres. Proc. 4099, 36 Fed. Reg. 24203 (Dec. 22, 1971). The quota level was again raised to 570,000 barrels per day in May of 1972 (Pres. Proc. 4133, 37 Fed. Reg. 9543 (May 12, 1972)) and to 675,000 barrels in January 1973 (Pres. Proc. 4178, 38 Fed. Reg. 1719 (Jan. 18, 1973)). See Tab 27, Volume D.

136. Vol. II, at 39.

137. National Energy Board, *1972 Annual Report* at 13. See Tab 33, Volume D.

138. National Energy Board, *1973 Annual Report* at 20. See Tab 33, Volume D.

139. *Idem.*

140. Under the tax, which began on October 1, 1973, U.S. purchasers paid an extra 40-cents-per-barrel — an amount calculated to equalize the frozen domestic price with the price of competing imports to the United States. National Energy Board, *1973 Annual Report* at 20. As prices continued to increase and doubts about the availability of supplies for Canada's own refineries grew, the tax was increased to $1.90 per barrel as of November 1, 1973. *Idem.* This export tax reduced the excess U.S. demand for Canadian oil, and once it was in place the NEB again began issuing permits for exports to the United States.

141. In addition, Dagher has estimated that in 1965 alone, total variable costs for Ontario refiners complying with the NOP were $33.4 greater than they would have been without the NOP. Dagher, *supra* note 5, at 812, see Tab 2, Volume D.

142. *Second Borden Report* at 134, see Tab 4, Volume D.

143. *See* page 26, *infra,* for a description of the additional refinery investments made in Ontario during the NOP.

144. Kinney, *supra* note 93, at 137, see Tab 21, Volume D. *See also* Document #45305, Sept. 21, 1964, Shell.

145. Vol. II, at 23.

146. Document #26122, undated, Shell.

147. J. J. Greene, Minister of Energy, Mines & Resources, Text of an address to the Alberta Division of the Canadian Petroleum Association (Feb. 12, 1970). See tab 34, Volume D.

148. *Idem.*

149. *Idem.*

150. Greene, *supra* note 128.

151. Eglington Testimony at 7514. Dr. Eglington also agreed that, as applied to the Ontario refiners, the NOP was a "comply or else" policy. *Idem.* at 7530. See Tab 1, Volume D.

152. Document #45279, Sept. 21, 1964, Shell.

153. Eglington Testimony at 7531. See Tab 1, Volume D.

154. *Idem.* at 7509-10, 7531, 7555-56.

155. In a presentation to the NEB Shell provided data showing that importation across the NOP line had a substantial adverse effect on Shell's earnings. Document #45304, Sept. 21, 1964, Shell.

156. *See, e.g.*, Vol. II, at 23 (Shell example).

157. *Idem.*

158. *See, e.g.*, Vol. II, at 21, 23.

159. Vol. II, at 23.

160. Document #115967, April 17, 1961, Imperial.

161. The Director's attempt to express his $3.1 billion overcharge estimate in ''present value'' terms as $22.6 billion is conceptually wrong and is the outcome of an incorrect methodology that artificially inflates the Director's estimates to arrive at numbers that make dramatic newspaper headlines but have no relevance for the analysis of public policy issues.

The Director's estimate is misguided because it concludes that a small overcharge committed long ago is more serious than a large overcharge committed just yesterday. Indeed, by the Director's calculations, a $53.052 overcharge in 1980 should be considered less serious than a $1 overcharge in 1958. (*See* Vol. I, Table A-2, Column 5).

The Director's overcharge estimates are also technically incorrect because they rely on inappropriate interest rates. In his present value calculations the Director applies an interest rate that he claims is the average return to shareholders' equity in all manufacturing sectors. *See* Vol. I, Table A-2 at 166. Putting aside for the moment reservations over the techniques described in note (c) to Table A-2 that were used to derive interest rates from published Stats-Can data, the interest rates are, on their face, implausible and incredible: They assert that returns of 19% were available in the 1950's and 1960's, and that returns of almost 27% were available in 1974.

These numbers sound very high — and indeed are high — because they presume that shareholder equity is the only capital invested in a firm. A firm's assets include debt capital, and the net return on capital invested in an industry must include returns on the total asset base, not just capital that happens to be raised in the form of equity. Indeed, the unreasonably high value of these rates of return is immediately apparent in any comparison with dividend payments or stock appreciation in the equity market over the same period.

These interest rates are also deficient as measures of economic return because they rely on accounting measures that give rise to ''systematic differences . . . between book yield and the true yield or internal rate of return on an investment.'' S. Sunder, *Oil Industry Profits* (1977) at 43, see Tab 35, Volume D. These accounting measures of return are unreliable because they are derived through the application of many different accounting conventions that are often inconsistent with each other, fail to take into account variations among firms in the riskiness of their business, and are based on book costs which, in an inflationary era, understate the market values and replacement cost values of the assets invested in the firm. *Idem.* at 41-43.

Indeed, once the effects of inflation on a firm's asset base are taken into account, returns on invested capital can drop dramatically. A study by Price Waterhouse & Co. found that inflation adjustment caused earnings to be 40% to 70% lower, effective tax rates to be 15 to 25 percentage points higher, and returns on assets to be 33% to 50% lower than under traditional accounting measures, such as those used by the Director. *See The Closest Look Yet at Inflation's Corporate Tool,* Business Week, June 16, 1980, at 148, Tab 36, Volume D.

These figures are also inappropriate measures for the Director's present value calculations because they presume that all overcharges would have been saved and invested at the "manufacturing equity" rate, and that consumers would not have consumed any portion of the saved overcharges and would not have invested them in any other instruments. In fact, alternate consumer consumption expenditure would have absorbed the largest part of any "savings" resulting from lower prices.

162. Vol. I, Table A-9 at 174.

163. This transfer pricing allegation is also the basis for an additional $3.8 billion in claimed overcharges (inflated to $32.3 billion in "present value"). Vol. I, Table A-1 at 165. These inflated overcharge estimates are subject to the same criticisms set forth in note 161, *supra.*

164. Aside from the serious conceptual difficulties with the Director's measurement of overcharges, there are a number of arithmetic lapses in the Director's calculations. For example:

(1) There is no adjustment for the cost of transportation from Montreal to Toronto in Column 3 of Table A-9 in Volume I. Thus, for the period from 1958 to 1961, when the transfer pricing overcharges are the only ones alleged to have existed in Ontario, the Director assumes that oil could have flowed from Montreal to Toronto for free. Assuming the Director's estimate of a 15-cent transportation cost is correct, his total is $42 million too high.

(2) There is a $100 million error in addition in favour of the Director in the last column of Table A-9 in Volume I.

(3) There is an error in transcription in the 1970 data from Table 29 of Volume II to Column 2 of Table A-9 in Volume I. The difference between Ontario and Montreal prices in 1970, according to the Director's estimate in Table 29 of Volume II, should be 53 cents, not 33 cents. This error makes a difference of about $27 million in the size of the alleged overcharge in 1970.

165. The only exception to this statement is oil shipped from Montreal into Ontario in violation of the NOP.

166. Vol. IV, Table 1 at 2.

167. See Table 1 at p. 6, *supra.*

168. International Petroleum Encyclopedia (1980) at 230, 232. See Tab 5, Volume D.

169. Canadian Petroleum Association, *Statistical Handbook,* Section, Table 6 (Total reserves at the end of 1973 were 1,431,458,000 cubic metres. At the end of 1960 they stood at 584,557,000 cubic metres.) See Tab 37, Volume D.

170. *Idem.* Section 1, Table 6. (Total for all years from 1961 through 1973, inclusive.)

171. *Second Borden Report* at 183, see Tab 4, Volume D.

172. Dagher, *supra* note 5, at 812-13. See Tab 2, Volume D.

173. It is worthwhile to note that the strength in the Canadian dollar from 1969 to 1973, when it grew by 7.7%, from U.S. $0.92855 to U.S. $0.99977, corresponds to the period of the sharpest growth in Canadian exports and the largest crude oil trade balance.

174. For descriptions of new construction activity in Ontario *see, e.g.* Oil and Gas Journal, April 3, 1961 at 190; March 19, 1962 at 174-75; April 15, 1963 at 181; April 1, 1968 at 161; March 31, 1969 at 91; June 30, 1969 at 122; Sept. 29, 1969 at 105; Dec. 29, 1969 at 133; March 30, 1970 at 124-25; June 29, 1970 at 120; Sept. 28, 1970 at 98-99; March 29, 1971 at 94; April 3, 1972 at 80; Sept. 18, 1972 at 104; March 26, 1973 at 102. See Tab 38, Volume D.

175. *Oil and Canadian Policy, supra* note 26, at 131. (''In short, Ontario accepted the National Oil Policy and the higher retail prices entailed by this policy in return for the concentration and expansion of a large refining and petrochemical industry in the Province.''), see Tab 9, Volume D.

176. 8 Can. Parl. Deb. H.C., 1973-1974 Sess. 8481 (Statement of the Honourable Pierre Elliott Trudeau).

And, as J. J. Greene, Minister of Energy, Mines and Resources said when the NOP was made mandatory, ''all parts of Canada enjoy the downstream benefits of a thriving western Canadian oil industry. Therefore it is in the interest of all Canadians that the policy be maintained in order that the western Canadian oil industry may continue to thrive and prosper.'' 7 Can. Parl. Deb. H.C., 1969-1970 Sess. 6671. The same view was expressed by Mr. Real Caouette who said ''It is of course in the interest of all Canadians that the National Oil Policy be maintained so that the industry may continue to thrive and prosper.'' *Idem.* at 6672. Tab 40, Volume D.

177. Rt. Hon. P. E. Trudeau, *Statement on the Energy Crisis, supra* note 6. See Tab 3, Volume D.

178. J. H. Dagher, in his doctorial thesis, reaches the same conclusion: ''For the country as a whole, however, there is little doubt that social costs under the National Oil Policy are lower than they would be under unrestricted imports . . . The excess costs incurred in Ontario are more than compensated on a national plane.'' Dagher, *supra* note 5, at 822. See Tab 2, Volume D.

Even oil industry analysts who are critical of the multinational oil companies agree that the NOP was beneficial. As M. Debanne observes,

> The multinationals . . . need not apologize as far as Canada is concerned, because their plan was economically advantageous to this country. Furthermore, it is probably in good part due to the representations of the multinationals that the 'overland exemption' for Canadian oil was included in U.S. oil imports policy . . . In effect [the NOP] allowed eastern Canada to benefit from its geography — its accessibility by sea — and allowed western Canada oilfields to take advantage of their relative proximity to the U.S. mid-continent and Pacific Northwest oil markets.

* * *

> In all fairness it must be recognized that the plan of the multinationals was economically advantageous for Canada as long as a price differential existed between western crude and cheaper overseas crude and for as long as the U.S. Import Quota system was in force.

Oil and Canadian Policy, supra note 26 at 134. See Tab 9, Volume D.

179. Eglington Testimony at 7553. See Tab 1, Volume D.